IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.33309 of 1998

Between:

C.L.N. Murty, S/o Challapalli Suryanarayana,

Formerly Grade III Officer cadre

Subsequently redesignated as

Junior Manager Scale-I Cadre

Andhra Bank, Gaganmahal Branch,

Hyderabad, resident of Hyderabad,

Aged about 55 years.

..... PETITIONER

AND

1. Andhra Bank, represented by its Chairman and

Managing Director, Central Office, Dr.Pattabhi

Bhavan, Saifabad, Hyderabad-500 004.

2. The General Manager (Staff), Andhra Bank,

Central Office, Dr. Pattabhi Bhavan,

Saifabad, Hyderabad-500 004.

3. Deputy General Manager, Andhra Bank,

Central Office, Dr. Pattabhi Bhavan,

Saifabad, Hyderabad 500 004.

4. Assistant General Manager,

Andhra Bank,

Central Office, Dr. Pattabhi Bhavan,

Saifabad, Hyderabad 500 004.

5. Personnel & Staff Manager,

Andhra Bank,

Central Office, Dr. Pattabhi Bhavan,

Saifabad, Hyderabad 500 004.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction in the nature of Writ of Mandamus by holding the action of the respondent in issuing the charge memo dated 20-11-1980 and dismissal order dt.24.12.80 issued by the fifth respondent and Proceedings dt.27.02.81 issued by the fourth respondent, which was further confirmed by the third respondent through Proceedings dt.02.6.81 and not considering the representation of the petitioner sympathetically, as directed by this Hon'ble High Court in W.P.No.16542/93, dt.11.10.1996 and rejecting the claim finally through Proceedings dt.21.10.98 as bad, illegal, irrational, arbitrary, discriminatory, void *ab initio,* without jurisdiction, violation of principles of natural justice, unconstitutional, harsh, without application of mind, non-speaking and violative of Articles 14, 16 and 21 of the Constitution of India and be set aside and direct the respondents to reinstate the petitioner with all consequential benefits, such as, arrears of salary, seniority, promotion etc.

Counsel for the Petitioner: Mr. J.SUDHEER

Counsel for the Respondents : Mr. NUTY RAM MOHAN RAO

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the charge memo dated 20-11-1980 and the order dated 24-12-1980 issued by the 5th respondent and Proceedings dated 27-2-1981 of the 4th respondent and also the Proceedings dated 2-6-1981 of the 3rd respondent, which confirmed the dismissal order dated 24-12-1980 and also not considering the representation of the petitioner sympathetically as directed by this Court in W.P.No.16542 of 1993, dated 11-10-1996 and rejecting the claim of the petitioner finally through Proceedings dated 21-10-1998 of the 4th respondent as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner with all consequential benefits.

This is a second round of litigation. Petitioner earlier filed Writ Petition No.16542 of 1993 questioning the Proceedings dated 24-12-1980 of the 5th respondent as confirmed in the Proceedings dated 27-2-1981 of the 4th respondent and further by the Proceedings of the 3rd respondent dated 2-6-1981.

It is the case of the petitioner that he is a Graduate in Commerce and was appointed as Typist-cum-Clerk in the respondent-Bank by an Order dated 19-3-1968. Subsequently, he was also promoted as Grade III Officer. While so, disciplinary proceedings were initiated by way of issuing a charge memo dated 20-11-1980. The disciplinary proceedings were concluded and that resulted in his dismissal from service. Thereafter, he filed an appeal and review, which were rejected. Challenging the same, he filed Writ Petition No.16542 of 1993, which was dismissed by this Court an Order dated 11-10-1996 holding as under:

> "The petitioner was an employee of Andhra Bank and he was promoted to the post of Grade III Officer. Proceedings were initiated on the ground that he has allegedly misappropriated certain amounts. After following the procedure and giving him an opportunity he was dismissed from service on 24.10.1980, against which he filed an appeal and it was dismissed. Aggrieved by the said order of dismissal, present Writ Petition is filed.

Since there is no procedural infirmity/irregularity, this Court cannot interfere under Article 226 of the Constitution of India against the findings arrived at by the disciplinary authority. Therefore, this Writ Petition is liable to be dismissed. It is accordingly dismissed. There will be no order as to costs.

However, if the petitioner makes a representation claiming for any relief in view of having 14 years of service, the respondents may consider the same sympathetically and pass appropriate orders in accordance with law."

In pursuance of the observations made above, the petitioner made a representation on 24-1-1997 to the 1st respondent. The said representation was taken up and considered by the Bank and through communication dated 15-12-1997 of the 5th respondent it was rejected. The petitioner made another representation on 17-3-1997 seeking reinstatement into service. His wife also made a representation on 26-7-1997 seeking to grant the relief sought for by her husband i.e. the petitioner herein. By communication dated 7-11-1997 to the wife of the petitioner, the 5th respondent informed as under:

"We wish to inform you that Mr. CLN Murthy has duly been replied to in the matter vide our letter No.666/20/L/502, dt.15.2.97 expressing our inability to take him back into the services of the Bank."

The petitioner made yet another representation to the 1st respondent on 4-9-1998 and the same was again rejected by the 5th respondent vide communication dated 21-10-1998, which reads as under:

"We acknowledge your representation dt.4.8.98 addressed to the Chairman & Managing Director.

I am directed to once again inform you that:

Your dismissal from the service of the Bank was for a grave misconduct of misappropriation of bank's funds and the order of dismissal was passed in the year 1981. The Honourable High Court in W.P.No.16542/93 filed by you observed that there was no procedural infirmity or irregularity committed by the Bank in the enquiry held against you. The service of 14 years put in by you prior to your dismissal cannot be a ground to take a lenient view of the misconduct and reinstate you at this point of time.

Please note that no further correspondence will be entertained in the matter."

Challenging the said letter, the present Writ Petition is filed. However, while filing the present Writ Petition, the petitioner also challenged the Proceedings, which attained finality in the Order of this Court dated 11-10-1996 in W.P.No.16542 of 1993, on the ground that the said order does not operate as *res judicata* since it is not a speaking order. Therefore, it is left open for the petitioner to challenge even the proceedings, which were subject matter of the earlier Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner and supporting the impugned orders.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and gone through the material made available on record.

At the threshold two important questions call for consideration in this *lis* and unless those questions are decided, the question of going into other aspects does not arise. The said two questions are:

i. Whether the order passed in W.P.No.16542 of 1993, dated 11-10-1996 operates as *res judicata* for decision of the issues raised in this Writ Petition ? and

ii. Whether by the impugned letter dated 21-10-1998, the Bank has properly considered the representation of the petitioner ?

From the Order in W.P.No.16542 of 1993 dated 11-10-1996, which is extracted above, it is clear that the Writ Petition, which was filed seeking a Writ of Certiorari, was disposed of on merits after furnishing reasons as required to be given in a judicial review of the orders passed by the respondents dismissing the petitioner from the service of the Bank, under Article 226 of the Constitution of India. Whereas, the learned counsel for the petitioner submits that since the said order dated 11-10-1996 is not an elaborate order and it has not dealt with the questions raised by the petitioner in Writ Petition No.16542 of 1993, it is a non-speaking order; thus, the question of any *res judicata* does not operate against the petitioner. It was, in fact, open for the petitioner to challenge the order passed in W.P.No.16542 of 1993, dated 11-10-1996 by way of filing a Writ Appeal and further carrying the matter to the Supreme Court, if necessary. When such a course of action was available to the

petitioner under law, he did not avail the same and he was satisfied with the order passed in Writ Petition No.16542 of 1993 on 11-10-1996. Only in pursuance of the observations made in the said order, he filed a representation before the 1st respondent and the same was rejected. Challenging the same, the present Writ Petition is filed raking up all the issues, which attained finality in the earlier round of litigation in Writ Petition No.16542 of 1993.

Learned counsel for the petitioner placed heavy reliance upon the Judgments of the Apex Court in **P.D. SHARMA v. STATE BANK OF INDIA, VIRUDHUNAGAR S.R. MILLS v. MADRAS GOVERNMENT, WORKMEN, C.P. TRUST v. BOARD OF TRUSTEES** and **PUJARI BAI v. MADAN GOPA.**

In **P.D.SHARMA**'s case (1 supra), it was held as under:

> "…that as the order summarily dismissing the Writ Petition was not a speaking order, no question of *res judicata* could arise and the case did not fall within the rule laid down in AIR 1967 SC 1457. The scope of an appeal under Article 136 is much wider than a petition under Article 226. In an appeal under Article 136 the Supreme Court can go into questions of facts as well as law, whereas the High Court in the Writ Petition could have only considered questions which would have been strictly relevant in an application for a writ of certiorari. An appeal under Article 136 against an order can succeed even if no case is made out to issue a writ of certiorari…."

In **VIRUDHUNAGAR S.R. MILLS** case (2 supra), the Apex Court held as under:

> "6. It is true that this Court said in that case that if a writ petition under Article 226 is dismissed on merits after contest it would bar a petition under Article 32 on the same facts. But the later observations at the same page show that that was not the only case in which there would be a bar of res judicata. Even where notice might not have been issued by the High Court and the writ petition dismissed in limine, the question whether such dismissal would bar a petition under Article 32 would depend upon the nature of the order dismissing it in limine. This is perfectly clear from the later observations made at p. 592 in the same case. Where therefore a writ petition is dismissed without notice to the other side but the order of dismissal is a speaking order and the petition is disposed of on merits, that would still amount to res judicata and would bar a petition under Article 32. The petitioner's only proper remedy in such a case would be to come in appeal from such a speaking order passed on the merits, even though the High Court may not have issued notice to the other side. What has been decided in Daryao's case, (1962) I SCR 574 = (AIR 1961 SC 1457) is that the High Court should have decided the petition on the merits by a speaking order. If that is done, it is immaterial

whether notice was issued to the other side or not before such a decision was given. The bar arises not because there was a notice issued but because the High Court has dealt with the merits of the petition before it and has passed a speaking order even though no notice might have been issued.

7. In the present case the petition is clearly barred in view of the decision in Daryao's case, (1962) I SCR 574 = (AIR 1961 SC 1457). The learned Single Judge who first dealt with the petition passed a short order dealing with the merits and stating that the validity of Section 12 of the Madras Act could not be attacked as the exemption was based on sound principles. He therefore repelled the attack on S. 12 of the Madras Act based on Article 14 of the Constitution. The petitioner then went in appeal to the Division Bench. The order of the Division Bench is more comprehensive than the order of the learned Single Judge and the Division Bench has dealt with the attack under Article 14 of the Constitution. It has rejected the contention that there was any element of hostile discrimination. It has also held that there was no arbitrary or unreasonable classification by Section 12 of the Madras Act. It has finally held that it could not be said that there was no nexus between the conditions specified in the Madras Act and the Central Act which seeks, for reasons of national development and prosperity, to license and supervise undertakings. The order of the Division Bench in appeal is clearly a speaking order dealing with the merits of the petition where only one point under Article 14 was raised. In our opinion it bars the making of the present petition under Article 32 on the same facts for the same relief based on the same article of the Constitution. The petitioner did not appeal from the order of the Division Bench. The High Court made a speaking order dealing with the merits of the case and the fact that no notice was issued to the other side before such an order was passed is immaterial in the circumstances. We therefore uphold the preliminary objection."

In **WORKMEN, C.P. TRUST** case (3 supra), it was held by the Supreme Court as under:

"8. It is well-known that the doctrine of res judicata is codified in S. 11 of the Code of Civil Procedure but it is not exhaustive. Section 11 generally comes into play in relation to civil suits. But apart from the codified law the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by Courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of S. 11 of the Code of Civil Procedure and in many other situations also principles not only of direct res judicata but of constructive res judicata are also applied. If by nay judgment or order any matter in issue has been directly and explicitly decided the decision operates as res judicata and bars the trial of an identical issue in a subsequent

proceeding between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in a former proceeding but was not so made, then such a matter in the eye of law, to avoid multiplicity of litigation and to bring about finality in it is deemed to have, been constructively in issue and, therefore, is taken as decided."

In **PUJARI BAI**'s case (3 supra), the Supreme Court held that when a Writ Petition after contest is disposed of on merits by a speaking order, the question decided in that petition would operate as *res judicata,* but not a dismissal *in limine* or dismissal on the ground of laches or availability of alternative remedy.

In fact, a reading of the above decisions would indicate that only when a Writ Petition is dismissed at the admission stage with non-speaking order, just saying 'dismissed', then only the said order could not operate as *res judicata.* Whereas, the principle of *res judicata* also comes into play when by the Judgment and Order a decision of a particular issue is implicit in it, i.e., it must be deemed to have been necessarily decided by implication, then the principle of *res judicata* on that issue is directly applicable. The effect of a non-speaking order of dismissal even without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to have been decided that it was not a fit case to grant any relief.

In this case, admittedly, this Court while disposing of W.P.No.16542 of 1993 by an order dated 11-10-1996 categorically stated that since there is no procedural infirmity or irregularity committed by the Bank, the High Court under Article 226 of the Constitution cannot interfere with the findings arrived at by the disciplinary authority and the Writ Petition was liable to be dismissed and it was accordingly dismissed. While exercising the Certiorari jurisdiction under Article 226 of the Constitution of India, this Court need not give any other reasons than the one given in the said order dated 11-10-1996. The said reasoning itself would show that the Court has looked into each and every aspect as to the infirmity or irregularity, if any committed by the disciplinary authority in arriving at the conclusions. This is not a case where the Writ Petition was dismissed just with one word 'dismissed'. Even that could have been sufficient in a given case. However, that is not the situation in

the present case that no reasons were furnished and the matter was not properly considered by this Court. The decisions relied upon by the learned counsel for the petitioner have no relevance to the facts of this case. Therefore, the submissions made by the learned counsel for the petitioner do not inspire the confidence of the Court to treat that the Order dated 11-10-1996 in Writ Petition No.16542 of 1993 does not operate as *res judicata* in raising the very same question again. Particularly, in this case, when an appeal provision was available, the petitioner did not avail the same and allowed the said order dated 11-10-1996 to attain finality. The petitioner having accepted the order dated 11-10-1996, approached the authorities and filed a representation. The enabling order allowing him to file a representation before the respondents would not give him a second cause of action for challenging the very same proceedings, which attained finality in W.P.No.16542 of 1993.

May be, it is always open for the petitioner to say that the representation filed by him as per the observations of this Court in W.P.No.16542 of 1993 dated 11-10-1996, was not properly considered. Even looking from this angle, the impugned letter of the 5th respondent dated 21-10-1998 cannot be found to be either suffers from any illegality or infirmity. The 5th respondent has categorically stated that the dismissal of the petitioner from service of the Bank was in pursuance of a grave misconduct on his part. The repayment of the amount of misappropriation and the clean service of 14 years itself cannot be a ground for reopening of case of the petitioner. In view of the above findings, there is no necessity of going into other details.

In the result, the Writ Petition sofar as challenging the Proceedings dated 20-11-1980, 24-12-1980, 27-2-1981 and 2-6-1981 is concerned, is liable to be dismissed holding that the earlier order of this Court between the parties in Writ Petition No.16542 of 1993, dated 11-10-1996 operates as *res judicata.* The Writ Petition is also liable to be dismissed even as to the challenge made to the Proceedings dated 21-10-1998, since no illegality or infirmity is committed by the 4th respondent in passing such orders.

For all the above reasons, the Writ Petition is dismissed. No order as to costs.

30-6-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman and

Managing Director, Andhra Bank, Central Office,

Dr.Pattabhi Bhavan, Saifabad, Hyderabad-500 004.

2. The General Manager (Staff), Andhra Bank,

Central Office, Dr. Pattabhi Bhavan,

Saifabad, Hyderabad-500 004.

3. Deputy General Manager, Andhra Bank,

Central Office, Dr. Pattabhi Bhavan,

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